

## **Remarks**

Claims 49-77 are pending in this application. Claims 49 and 67-68 have been amended, and no claims have been added or canceled. Reconsideration of this application is respectfully requested in light of the above amendments and the following remarks.

### **Rejection of Claims 49-57, 59-62, 65-74, and 76 Under 35 U.S.C. § 102(b) Over Apps and Kelly**

Claims 49-57, 59-62, 65-74, and 76 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. D378,249 issued to Apps et al. ("Apps") and by U.S. Patent No. D371,239 issued to Kelly ("Kelly"). In response, Applicants have amended independent claims 49 and 67-68 to more particularly point out and distinctly claim the subject matter of the invention. Specifically, claim 49 now recites "the upper wall portion including an alternating arrangement of first areas having a single-walled construction and second areas for contacting the fluid containers, the first areas co-planar with an outer surface of the second areas, wherein at least one of the first areas has an upper edge which is lower in height than an upper edge of the second areas and the first areas vary in height to form a non-symmetrical contour along the upper wall portion." Claims 67-68 have been similarly amended, where support for these amendments can be found, for example, at p. 12, lines 17-18 of the specification and in FIGS. 1-2.

With reference to the rejection over Apps, Applicants assert that Apps does not disclose or suggest an "upper wall portion including an alternating arrangement of first areas having single-walled construction and second areas for contacting the fluid containers." In contrast to Applicants' claimed invention, Apps discloses an alternating arrangement of columns and cutout portions. In addition, Apps' wave contour is not "co-planar with an outer surface of the second areas," but rather is disposed outwardly therefrom. With regard to Kelly, Applicants assert that Kelly discloses first areas having upper edges which are of equal height to upper edges of the second areas. Furthermore, Kelly again discloses a contour wave element which is not co-planar with an outer surface of the second areas, but rather is an

additional element disposed outboard of first and second areas the along the side walls of the case. For at least these reasons, claims 49 and 67-68 are patentably distinguishable over both Apps and Kelly, and reconsideration and withdrawal of the rejection of these claims, as well as their corresponding dependent claims, is respectfully requested.

**Rejection of Claims 49, 51-53, 55-56, and 59-60  
Under 35 U.S.C. § 102(b) Over Umiker**

Claims 49, 51-53, 55-56, and 59-60 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. D360,758 issued to Umiker (“Umiker”). As described above, Applicants have amended claim 49 to recite that “at least one of the first areas has an upper edge which is lower in height than an upper edge of the second areas and the first areas vary in height to form a non-symmetrical contour along the upper wall portion.” In contrast, Umiker discloses a full-depth bottle crate where an upper edge of the side wall including the wave portion is actually of greater height than the columns. Furthermore, like Apps and Kelly, Umiker’s wave portion sits outward beyond the outer surface of the columns, and thus is not “co-planar with an outer surface of the second areas” as claimed by Applicants. Accordingly, claim 49 is patentably distinguishable over Umiker, and Applicants respectfully request reconsideration and withdrawal of the rejection of this claim, along with dependent claims 51-53, 55-56, and 59-60.

**Rejection of Claims 49-77  
Under 35 U.S.C. § 103(a) Over McGrath or Hammett and Kelly**

Claims 49-77 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,047,844 issued to McGrath (“McGrath”) or U.S. Patent No. 5,421,477 issued to Hammett (“Hammett”) in view of Kelly. Applicants have explained above that Kelly discloses a contour element which is disposed along the outer surface of a bottle case outboard of the first and second areas. As such, the combination of Kelly with either McGrath or Hammett does not result in Applicants’ claimed invention, which requires the single-walled first areas to be co-planar with an outer surface of the second areas. Furthermore, no motivation or suggestion to replace the areas between McGrath’s or Hammett’s columns with single-walled areas having a non-symmetrical contour exists in any

of McGrath, Hammett, or Kelly. For example, as recognized by the Examiner, McGrath teaches away from the claimed “alternating arrangement of first areas having a single-walled construction and second areas for contacting the fluid containers,” and instead discloses an upper wall portion having a double wall construction (*see* McGrath, col. 4, lines 44-45; col. 7, lines 34-35 and lines 57-62). Therefore, claims 49-77 are patentably distinguishable over the combination of either McGrath or Hammett with Kelly, and reconsideration and withdrawal of the rejection of these claims under 35 U.S.C. § 103(a) is respectfully requested.

### **Conclusion**

In summary, Applicants believe that the claims meet all formal and substantive requirements and that the case is in appropriate condition for allowance. Accordingly, such action is respectfully requested. If a telephone conference would expedite allowance of the case or resolve any further questions, such a call is invited at the Examiner's convenience.

A check in the amount of \$120.00 is enclosed to cover the Petition fee. Please charge any additional fees or credit any overpayments as a result of the filing of this paper to our Deposit Account No. 02-3978.

Respectfully submitted,

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